



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wareagle Systems, Inc.

File: B-255751

Date: March 29, 1994

Carl D. McClure for the protester,
Anne B. Perry, Esq., and Joel R. Feidelman, Esq., Fried,
Frank, Harris, Shriver & Jacobson, for KPMG Peat Marwick, an
interested party.
Wendy A. Polk, Esq., and Riggs L. Wilks, Jr., Esq.,
Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Where the agency included in a solicitation a sample task, reflecting an actual contract requirement which had not previously been performed by the incumbent contractor, the agency did not afford the incumbent contractor any unfair competitive advantage by including this sample task in the solicitation.

DECISION

Wareagle Systems, Inc. protests the inclusion of particular sample tasks in request for proposals (RFP) No. DAHA90-93-R-0025, issued by the National Guard Bureau, Departments of the Army and the Air Force, for professional audit and evaluation study services in support of the Program Management Office Reserve Component Automated Systems (RCAS). The protester essentially contends that the sample tasks in the RFP give an unfair competitive advantage to the incumbent contractor.

We deny the protest.

The RCAS is an automated information system which, when fully implemented, is expected to improve the operational readiness and mobilization of the Army National Guard and the Army Reserve at approximately 5,000 locations. The RFP, issued on an unrestricted basis on August 23, 1993, contemplated the award of a firm, fixed-price, indefinite quantity/indefinite delivery contract for a base period and 4 option years. The RFP stated that the contractor would be required to provide multi-disciplined management audit and

evaluation services based on task orders issued by the contracting officer.

On September 21, the agency held a pre-proposal conference. At the conference, which was attended by representatives of the protester, the agency responded to approximately 90 questions asked by prospective offerors. Subsequently, the agency issued amendment No. 0002, which provided written responses to the questions answered at the conference and added two sample tasks to the statement of work in the RFP. These sample tasks were added so that the agency could evaluate an offeror's experience, technical capabilities, and understanding of the contract requirements.

The first sample task, entitled "Benefits Analysis in Support of the Milestone III Economic Analysis," requires the contractor to be familiar with the reserve components, their mission and roles, and how the RCAS will operate in the particular environment. The sample task basically requires the contractor to determine the benefit of the RCAS to its users, as described in monetary terms to the extent possible.¹ The second sample task, entitled "Cost and Schedule Status Report (C/SSR) Analysis," requires the contractor to calculate various cost indices, detect significant trends, forecast cost estimates at completion, and evaluate and prepare a narrative assessment of the quality of the RCAS prime contractor's (Boeing Computer Services) data and analyses.

Prior to the November 19 amended closing date for receipt of initial proposals, the protester filed this protest. While the protester does not question the general use of sample tasks for evaluation purposes, it challenges the inclusion of the particular sample tasks in the RFP, contending that these sample tasks give an unfair competitive advantage to

¹In accordance with Army regulations, the Major Automated Information Systems Review Council must approve the government's accomplishment of sequential milestones before the government may proceed to the next phase in the development of an information management system. Relevant to this protest, Milestone I represents a concepts development phase, Milestone II represents a design phase, and Milestone III represents a development phase.

²This sample task requires the use of questionnaires for the collection of data. Contrary to the protester's assertion, the agency does not take the position that questionnaires are the only basis for gathering information, but rather, its position is how the agency chose to have prospective offerors respond to the sample task under this RFP in order to have a common basis for evaluation purposes.

the incumbent contractor, Peat Marwick. In this regard, the protester states that the sample tasks involve work accomplished by Peat Marwick under its predecessor contract. The protester maintains that it, as well as the other prospective offerors, will be at an unfair competitive disadvantage when responding to the sample tasks since Peat Marwick, as the incumbent contractor, is familiar with the RCAS and the agency's requirements and has obtained information which will assist it in responding to the sample tasks. The protester suggests that other sample tasks be used for evaluation purposes.

There is no merit to this protest. First, in response to the protest, on November 19, the agency issued amendment No. 0003³ which deleted in its entirety the C/SSR sample task because Peat Marwick had, in fact, performed some elements of this sample task under the predecessor contract. Second, the record shows that the benefits analysis sample task represents an actual contract requirement which has not been performed by Peat Marwick, i.e., under its predecessor contract, Peat Marwick has not done any benefits analysis for either Milestone I or II. In addition, it appears from the record that Peat Marwick has no more information available to it in responding to this sample task than do the other offerors. In this regard, the RFP included, for use by all prospective offerors, detailed answers to the pre-proposal questions, the statement of work for this requirement, a description of the RCAS, a labor category wage rate table, estimated person-hours for each period of performance, a project summary matrix, and a schedule of the RCAS program milestones. Therefore, on this record, it appears that the agency's inclusion of this sample task did not confer any unfair competitive advantage to Peat Marwick and that all prospective offerors were competing on an equal basis. Automaker, Inc., B-249477, Nov. 24, 1992, 92-2 CPD ¶ 372.⁴

³Amendment No. 0003 also extended the closing date for receipt of initial proposals to December 6. While the protester did not submit a proposal, the agency did receive proposals from other firms. No other firms protested the inclusion of the sample tasks in the RFP or that Peat Marwick had received any unfair competitive advantage.

⁴The protester speculates that it will be easier for Peat Marwick to respond to this sample task because it may have information, gained through its performance of the C/SSR requirement, concerning the RCAS Limited User Test (involving testing of the RCAS at designated sites). We believe that to the extent Peat Marwick has any information, it is as a result of its prior experience and does not

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Finally, the protester complains that, unlike for other prospective offerors, the contracting officer would not answer further questions from the firm after the issuance of amendment No. 0002, which included answers to the pre-proposal questions and the sample tasks.

In early October, the protester called the contracting officer to request answers to additional questions. According to the protester, the contracting officer stated that additional questions were no longer being accepted. However, the record shows that in late October, despite its belief that there was a common cutoff for questions, the protester sent a letter to the contracting officer concerning matters which, in the protester's view, were material to its ability to submit a proposal under this RFP and which it subsequently protested to our Office. The contracting officer responded to the concerns raised in the protester's letter before the December 6 amended closing date for receipt of initial proposals. Accordingly, we do not think the protester has any basis to complain that the contracting officer would not answer additional questions when the record shows that she did, in fact, respond to additional questions.

As for the additional questions answered by the contracting officer for two other firms, the record shows that one firm's questions were answered after the amended closing date. These responses, therefore, could not have aided this firm in the preparation of its initial proposal. Further, assuming these responses provided material information to the firm, since the protester did not submit a proposal, it has not been prejudiced by any subsequent use of the responses by the firm. The other firm's questions, while answered before the amended closing date, involved an

⁴(...continued)

represent an unfair competitive advantage for which the agency must compensate. Id. Moreover, it appears from reviewing the sample task that an offeror need not know the specific user areas in responding with a sample task approach as part of its proposal. In addition, while the protester also requested that certain additional documents be included in the RFP in order to respond to this sample task, for example, prior proposals of Peat Marwick and reports generated as a result of Peat Marwick's prior performance, the agency reports that these documents contain proprietary and procurement sensitive information which the protester is not entitled to review in preparing its proposal. See, e.g., Information Ventures, Inc., B-240925.2, Jan. 15, 1991, 91-1 CPD ¶ 39. We have no basis to question this conclusion. Further, regulations requested by the protester are publicly available.

extension of the closing date, the public availability of certain documents, and answers to four questions which merely reflected information in the RFP or in the answers to the pre-proposal questions (e.g., minimum acceptable personnel qualifications requirements, project summary matrix and statement of work requirements, the requirement to submit a price for contract data requirements, and reference to schedule line items). We conclude that the protester had in its possession the same information as the other prospective offerors and was not at any competitive disadvantage in preparing a proposal.

The protest is denied.

Robert P. Murphy

Robert P. Murphy
Acting General Counsel